

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Docket No. 02-280-F

In re Patent of Bannen <i>et al.</i>)	
Patent No.: 7,629,341)	
Application No.: 10/518,110)	Group Art Unit: 1626
Issue Date: December 8, 2009)	
Filing Date: October 26, 2005)	Confirmation No.: 3309
Entitled: Human Adam-10 Inhibitors)	Examiner.: POWERS, FIONA

**PETITION FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT FILED
UNDER 37 C.F.R. § 1.705(d)**

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The patentee petitions for adjustment of the Patent Term Adjustment (“PTA”) of U.S. Patent No. 7,629,341 (“the ‘341 patent”), issued on December 8, 2009.

The patentee submits that, first, adjustments under 35 U.S.C. § 154(b)(1)(A) and 35 U.S.C. § 154(b)(1)(B) have not been properly accorded according to *Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir., Jan. 7, 2010). As confirmed by the Federal Circuit in *Wyeth*, to calculate PTA according to 35 U.S.C. § 154(b), the delay periods under § 154(b)(1)(A) and § 154(b)(1)(B) should be added to the extent that they do not occur on the same calendar day.

Second, the Office neglected to include in its calculations a 40 day applicant's delay in responding to a Notice to File Missing Requirements.

As a result, the patentee submits it is entitled to 940 days of PTA, not the 506 days as calculated by the Patent Office

In the present case, the Office delay under 35 U.S.C. § 154(b)(1)(A) is 604 days for issuing a first action under 35 U.S.C. § 132 at 14 months and 604 days after the 37 C.F.R. § 371(c) date of the ‘110 application, 35 U.S.C. § 154(b)(1)(A)(i).

CERTIFICATE OF TRANSMISSION (37 C.F.R. 1.8)

I hereby certify that this correspondence is being transmitted to the USPTO via the USPTO EFS on February 8, 2010.

Date: February 8, 2010

/Michael S. Greenfield/
Michael S. Greenfield

The delay period under 35 U.S.C. § 154(b)(1)(B) is 550 days. (from June 7, 2008 until the December 8, 2009). The '110 application is a national stage filing of International application PCT/US03/18262, which claims priority to U.S. Provisional Application Serial No. 60/388,316, filed on December 6, 2002. The U.S. national stage for the '110 application commenced 30 months after the claimed priority date of the parent PCT application, or June 6, 2005, 35 U.S.C. § 371(b). The B-delay period begins three years and a day after the national stage commenced, or June 7, 2008.

The § 154(b)(1)(A) and § 154(b)(1)(B) periods overlap on 76 calendar days (June 7, 2008 until August 21, 2008), 35 U.S.C. § 154(b)(2)(A).

Applicants' delay (35 U.S.C. § 154(b)(2)(C)) is 138 days for:

1. Filing a response to the Notice to File Missing Requirements mailed June 16, 2005 at 3 months and 40 days after mailing, 37 CFR § 1.704(b);
2. Filing a response, having an omission, to the Office Action mailed August 21, 2008. The original response was filed on September 17, 2008 and the corrected response was filed on November 21, 2008, a delay of 65 days. 37 CFR § 1.704(c)(7);
3. Filing an Information Disclosure Statement 18 days after filing Applicant's response filed on November 21, 2008, 37 CFR § 1.704(c)(8); and
4. Filing an Amendment under Rule 312 on October 22, 2009; the Office responded to the 312 Amendment on November 5, 2009, a delay of 15 days, 37 CFR § 1.704(c)(10).

Thus, the total delay is $604 + 550 - 138 - 76 = 940$ days, not 506 days as calculated by the USPTO.

The '341 patent is not subject to a terminal disclaimer.

Conclusion

For all the reasons stated above, patentees respectfully request the USPTO to recalculate the Patent Term Adjustment.

Fee Authorization: The Commissioner is authorized to charge the cost of any fees that may be associated with the filing of this Petition to Deposit Account No. 13-2490.

If there are any questions or comments regarding this application, the Office is encouraged to contact the undersigned in order to expedite prosecution.

Respectfully submitted,

Date: February 8, 2010

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